

Attorney Docket No. LKMP:112US
U.S. Patent Application No. 10/613,172
Reply to Office Action of March 24, 2005
Amendment and Request for Reconsideration dated: May 3, 2005

Amendments to the Drawings

Annotated Sheets Under 37 CFR 1.121(d)(1)

The Examiner requested that annotated sheets, showing the changes made in the Replacement Sheets provided in the reply of February 15, 2005, be provided under 37 CFR 1.121(d)(1). Applicant has provided a full set of the drawings for this purpose. The drawings are labeled "ANNOTATED SHEETS" and show the drawings as they were at the time of the August 26, 2004 Office Action response. The changes made to Figures 6A, 6B, 6C, 10, 11, 12, 12A, 13, 14, and 15 in the February 15, 2005 reply are hand marked and hand labeled.

Objection to the Drawings under 37 CFR 1.83(a)

The Drawings were objected to under 37 CFR 1.83(a) for not showing every feature of the invention specified in the claims. Applicant has provided a full set of replacement drawings. Each sheet is labeled "REPLACEMENT SHEET." A waterline has been added to and labeled in drawings 2, 8A, 8B, 9A, 9B, 10, 11, 12, 12A, 13, 14, and 15 to show the subject vessel as floating upon a water surface or being submerged below a water surface. Applicant requests that the objection be removed.

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Remarks/Arguments

Restriction and Species Election Under 35 U.S.C. 121

In the Office Action of March 24, 2005, the Examiner identified two patentably distinct species of the claimed invention. Applicant has elected Species A; Claims 1-13 and 15-27 for examination without traverse. Applicant has withdrawn from consideration Species B; Claims 14 and 28.

The Objection to the Specification Under 37 CFR 1.75(d)(1) and MPEP § 608.01(o)

The Specification was objected to under 37 CFR 1.75(d)(1) and MPEP § 608.01(o) for failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner objected to the recitation of an “arcuate” truss in Claims 1 and 15.

Applicant has added a new paragraph [00028A] providing support for the recitation of an arcuate truss, based on the figures in the specification. Applicant respectfully submits that the amended specification is in compliance with 37 CFR 1.75(d)(1) and MPEP § 608.01(o) and requests that the objection be removed.

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Objection to Claim 24

Claim 24 was objected to for informalities. Applicant has amended Claim 24 as suggested by the Examiner. Applicant requests that the objection be removed.

Amendments to Claims 1 and 15

Claims 1 and 15 have been amended to recite: "said members pivoting in a plane substantially coplanar with said portion of said vessel hull." This orientation of the rotational plane for the members is shown in each of the figures. In particular, the perspective view of Figures 7A-7C and the detail of Figures 16A-16D show the members rotating substantially coplanarly with respect to the portion of the hull formed by the truss assembly.

The Rejection of Claims 1-3, 5, 7-13, 15-17, 19, and 21-27 Under 35 U.S.C. §102

The Examiner rejected Claims 1-3, 5, 7-13, 15-17, 19, and 21-27 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,706,253 (Nedderman, Jr.). Applicant respectfully traverses the rejection.

Anticipation requires all the elements of the claim be taught within the four corners of a single reference.

Claims 1 and 15

Nedderman's arm and truss rotate orthogonal to the plane of wall 18

Claims 1 and 15 recite: "said members pivoting in a plane substantially coplanar with said portion of said vessel hull." Assuming *arguendo* that the arms 32 and struts 36 of Nedderman form a truss assembly and that the boundary wall 18 of Nedderman is a vessel hull, the arms and struts pivot in a plane orthogonal to a plane of boundary wall 18. That is, the

orientation of the pivoting motion in Nedderman is opposite of that recited in Claims 1 and 15. The orientation of the pivoting motion in Nedderman is clearly shown in Figures 1 and 2, which show the arm and strut (ends 50 and 42, respectively) pivoting orthogonal to a cross-section (plane) of wall 18. In Figure 3, the pivot plane of the arms 32 is clearly orthogonal to wall 18.

Nedderman does not teach all the elements of Claims 1 and 15. Therefore, Nedderman does not anticipate the invention of Claims 1 and 15. Claims 2, 3, 5, 7-13, dependent from Claim 1, also enjoy the same distinctions from the cited prior art. Claims 16, 17, 19, 21-27, dependent from Claim 15, also enjoy the same distinctions from the cited prior art. Applicant requests that the rejections be withdrawn.

The Rejection of Claims 6 and 20 Under 35 U.S.C. §103

The Examiner rejected Claims 6 and 20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,706,253 (Nedderman, Jr.) in view of U.S. Patent No. 5,499,594 (Bullock). Applicant respectfully traverses the rejection.

An invention is unpatentable if the differences between it and the prior art would have been obvious at the time of the invention. As stated in MPEP § 2143, there are three requirements to establish a *prima facie* case of obviousness.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Claims 1 and 15 are not anticipated by Nedderman. Specifically, Nedderman fails to teach, suggest, or motivate: "said members pivoting in a plane substantially coplanar with said portion of said vessel hull." Bullock does not teach an assembly truss with pivoting members and does not cure the defects of Nedderman. Therefore, Nedderman in view of Bullock fails to fulfill the third *prima facie* requirement regarding the foregoing claims. The Examiner has failed to provide suggestion or motivation for Nedderman and Bullock to modify their inventions to include the elements of Claims 1 and 15. The fact that a modification would be within the

ordinary skill of the art is not proof of motivation *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). The Applicant respectfully submits that the cited prior art is only modified in retrospect, in light of the present invention. That is, the obviousness rejection is based upon the Applicant's own invention characterization, not the modification of Nedderman and Bullock.

Claims 1 and 15 are patentable over Nedderman in view of Bullock. Claim 6, dependent from Claim 1, also enjoys the same distinction from the cited prior art. Claim 20, dependent from Claim 15, also enjoys the same distinction from the cited prior art. Applicant requests that the rejections be withdrawn.

The Objection of Claims 4 and 18 as Being Dependent Upon a Rejected Base Claim

Claims 4 and 18 were objected to as being dependent upon a rejected base claim, but the Examiner indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Amended Claims 1 and 15 are novel with respect to the prior art cited in the Office Action. Therefore, Applicant respectfully submits that Claim 4, dependent from Claim 1, no longer depends upon a rejected base claim; and, Claim 18, dependent from Claim 15, no longer depends upon a rejected base claim. Applicant respectfully submits that these claims are now in condition for allowance, which action is courteously requested.

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Conclusion

Applicant respectfully submits that all pending claims are now in condition for allowance, which action is courteously requested.

Respectfully submitted,



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CPM
Dated: May 3, 2005

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Appendix



ANNOTATED SHEETS

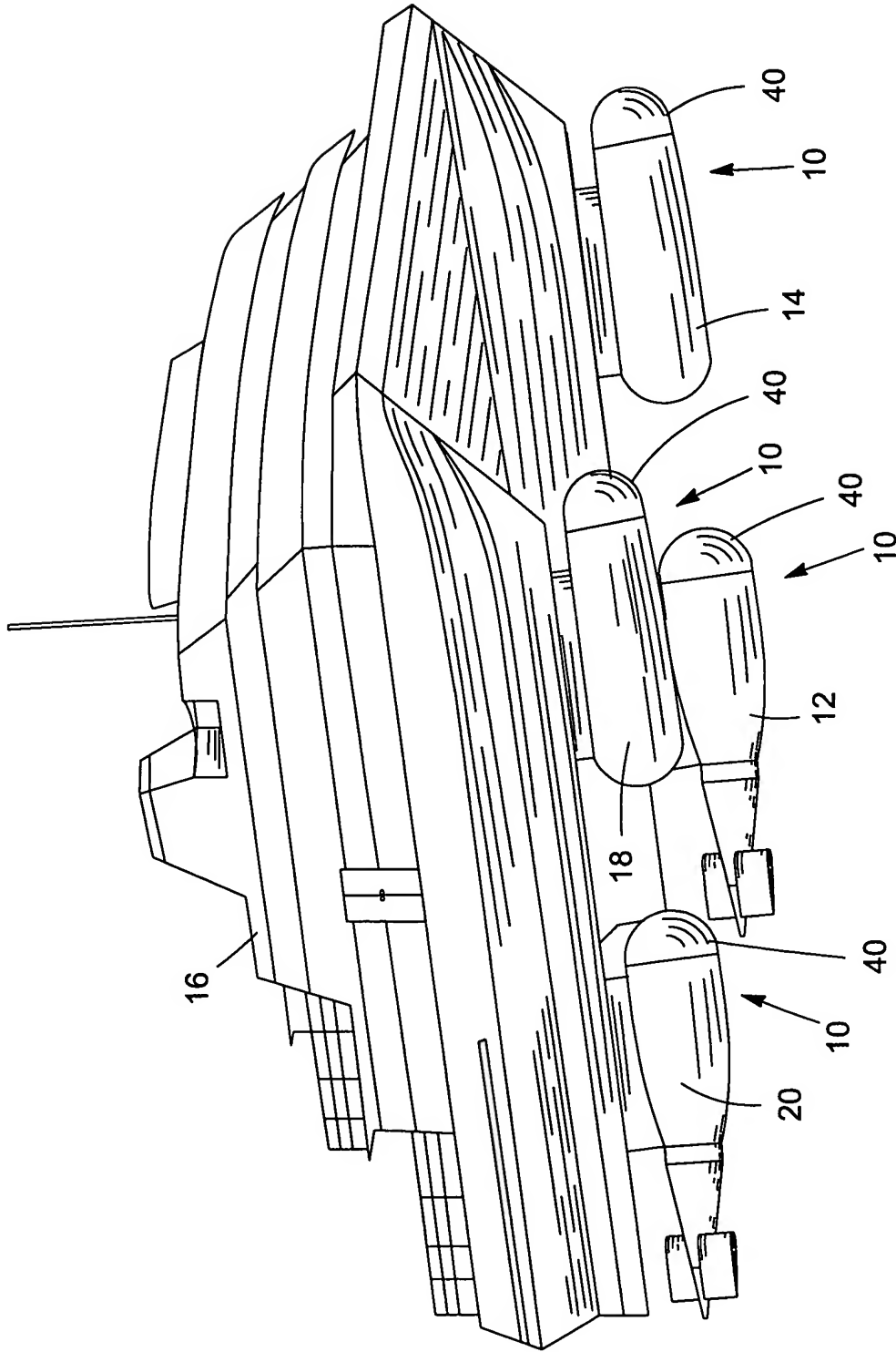


Fig. 1

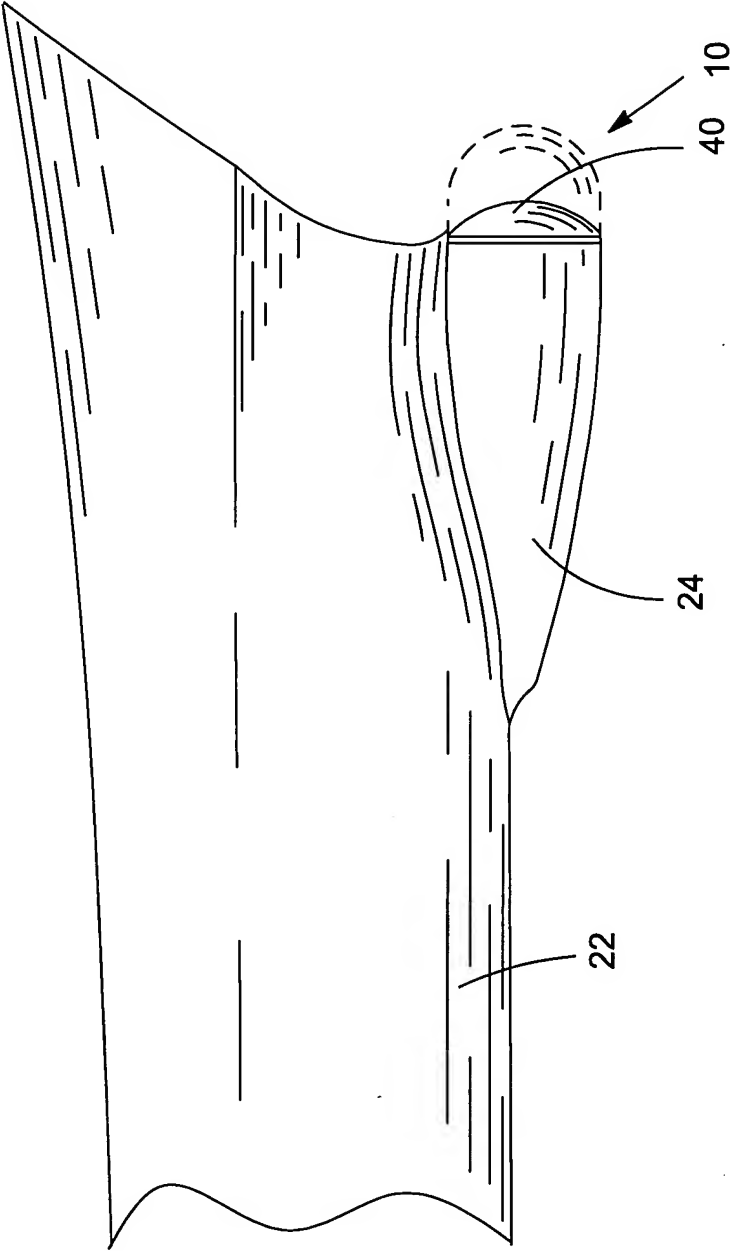


Fig. 2

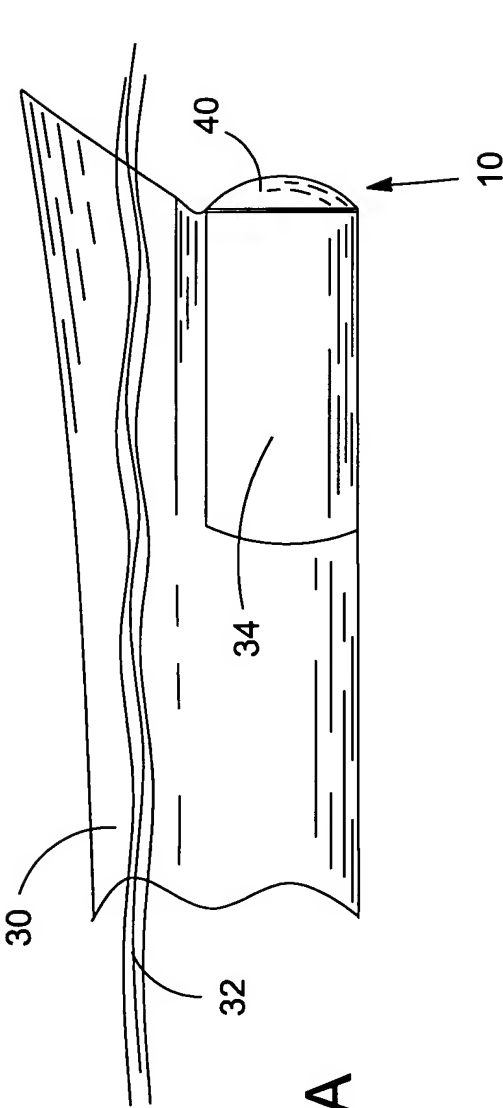


Fig. 3A

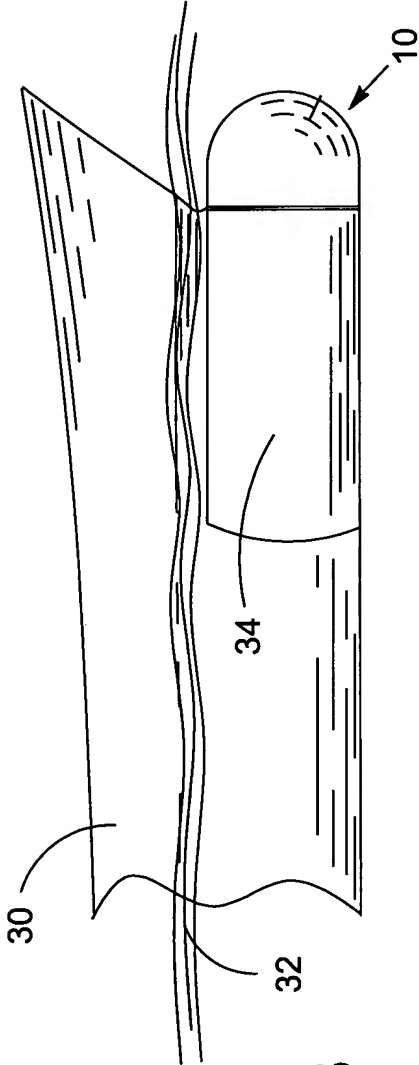


Fig. 3B

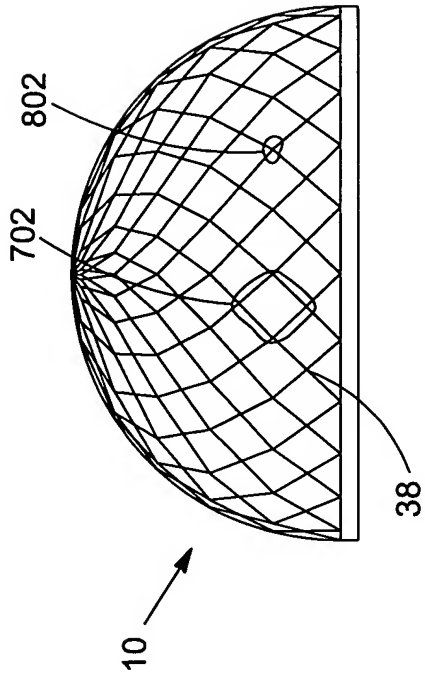


Fig. 4A

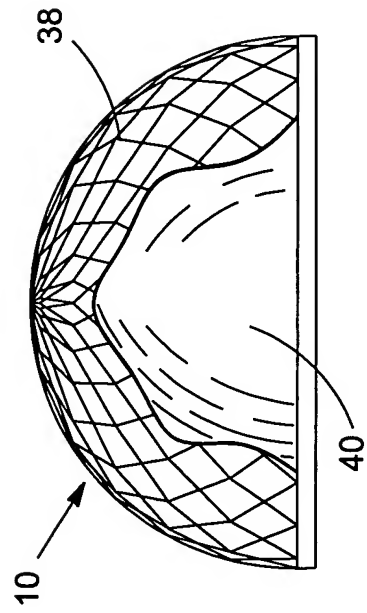


Fig. 4B

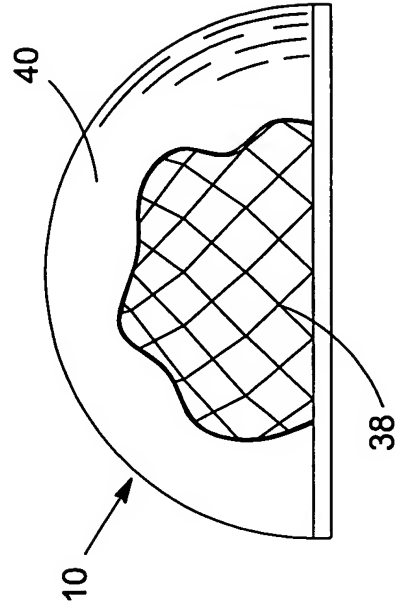


Fig. 4C

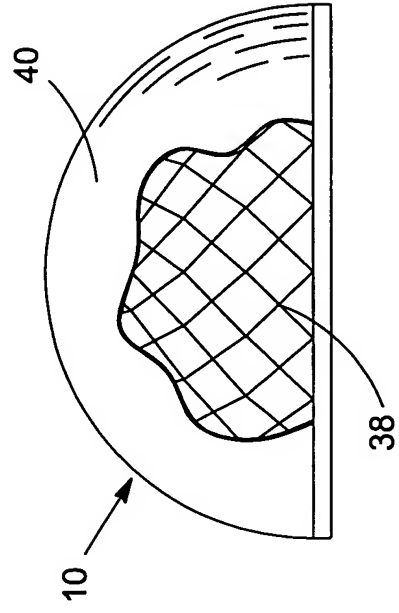


Fig. 4D

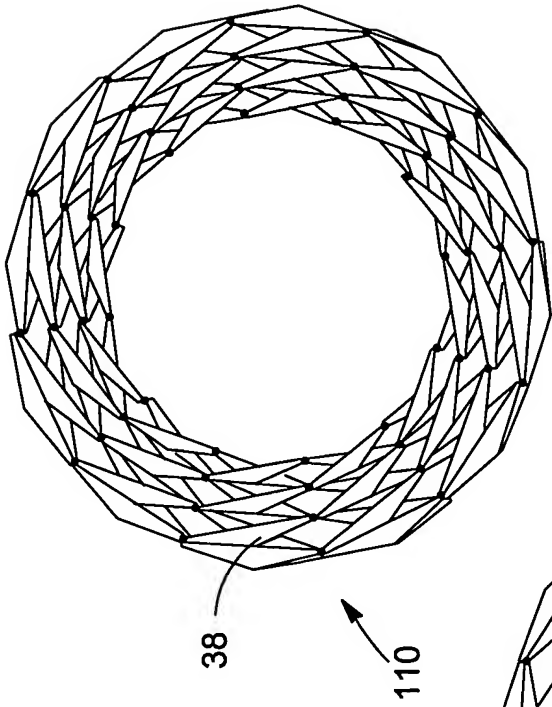


Fig. 5C

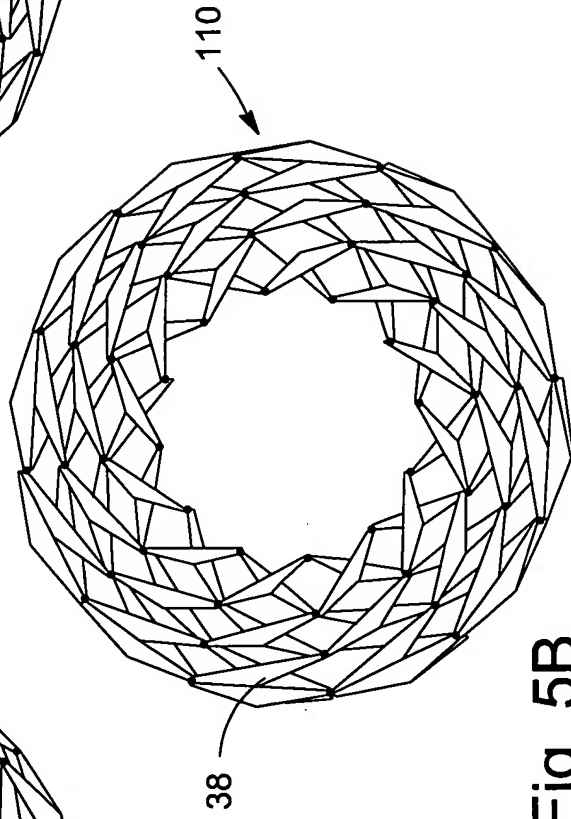


Fig. 5B

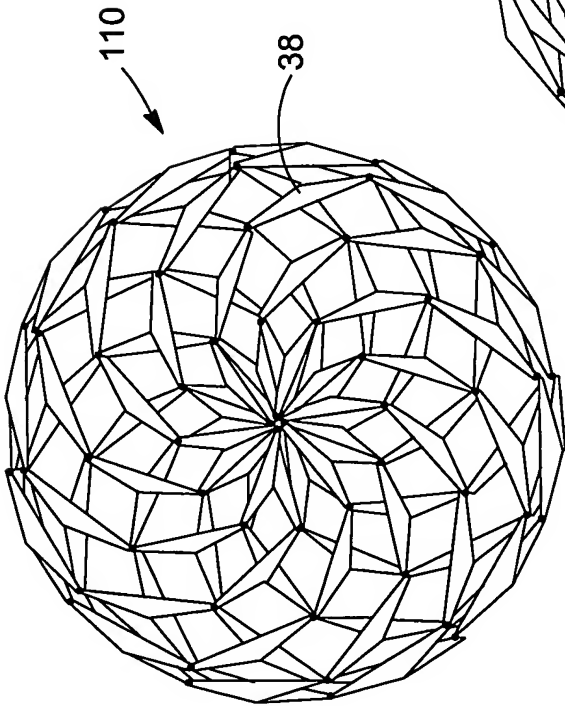
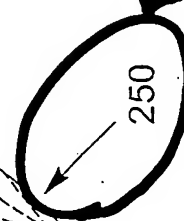
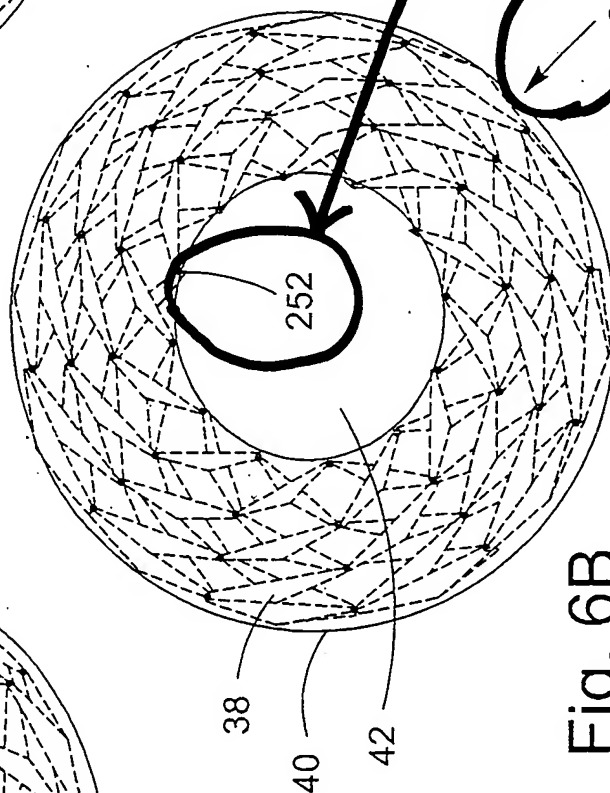
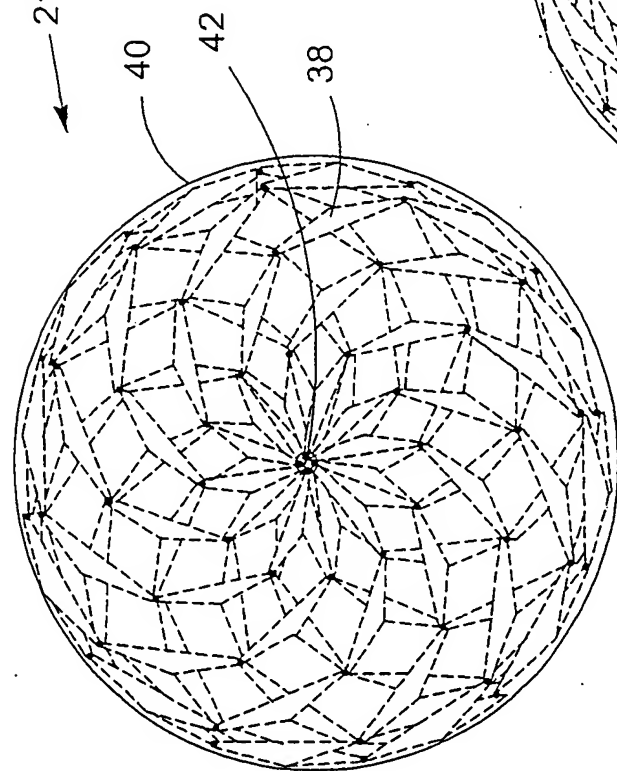
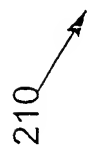
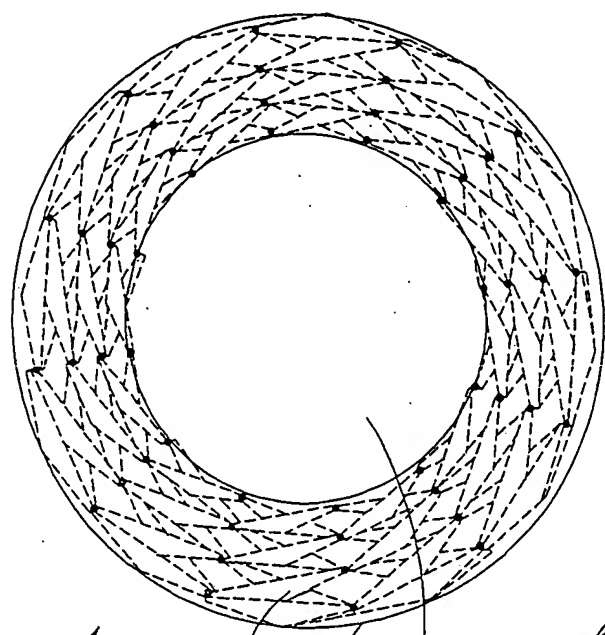


Fig. 5A



REMOVED

REMOVED

Fig. 6C

Fig. 6B

Fig. 6A

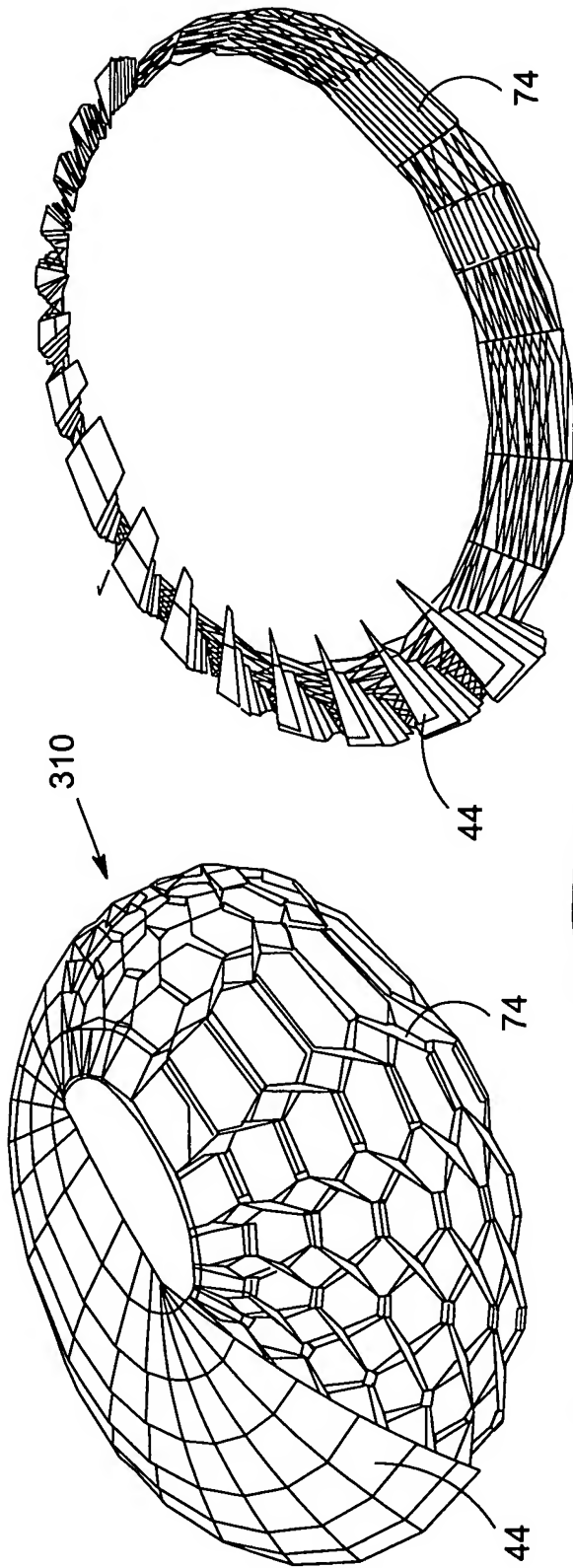


Fig. 7A

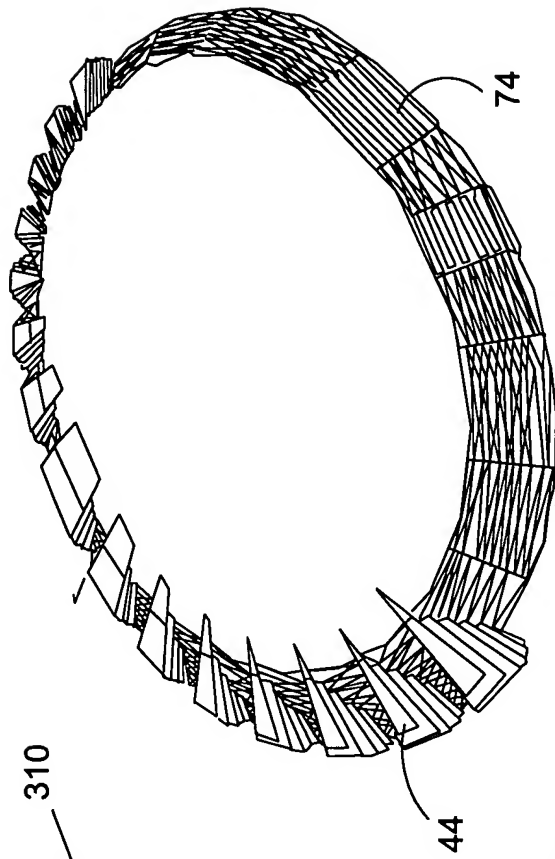


Fig. 7C

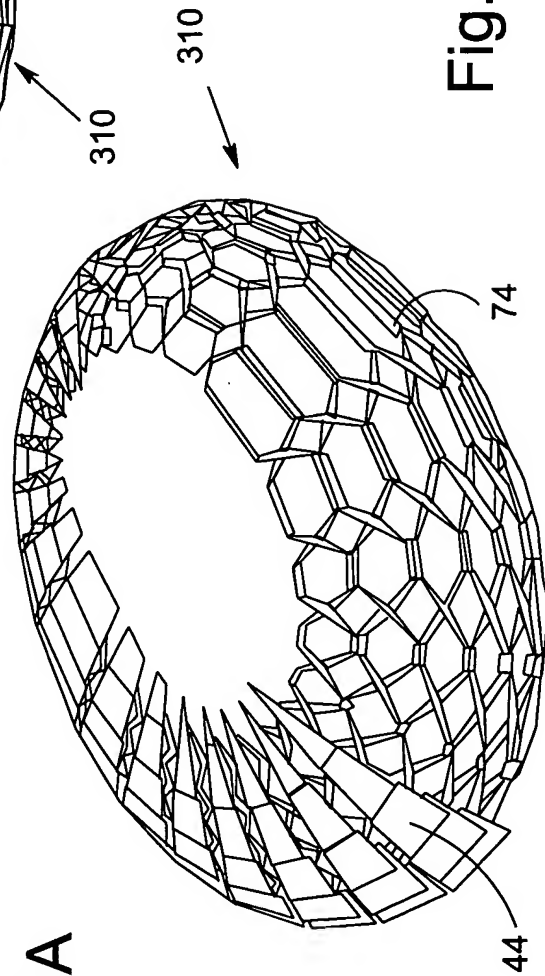


Fig. 7B

Fig. 8A

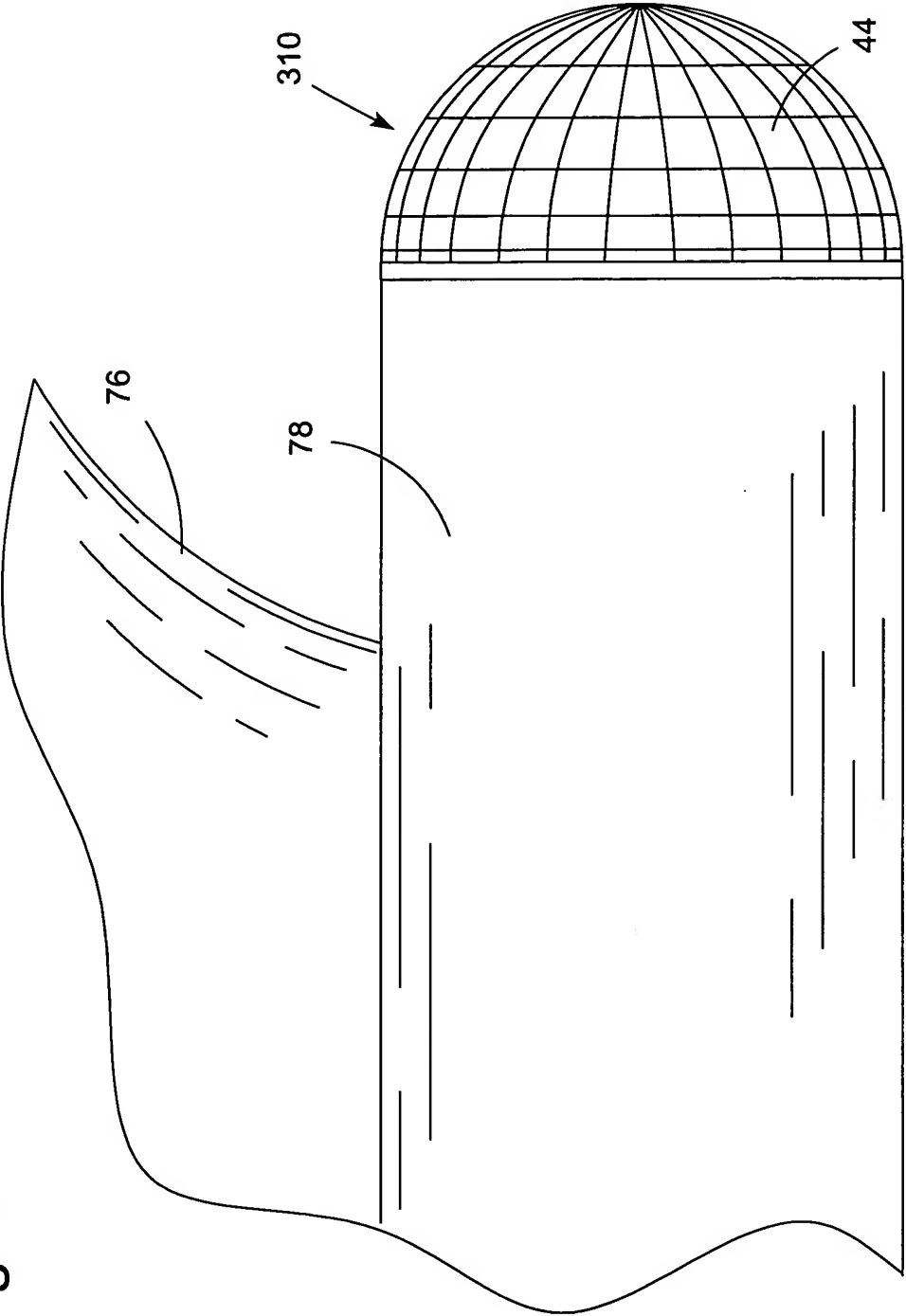
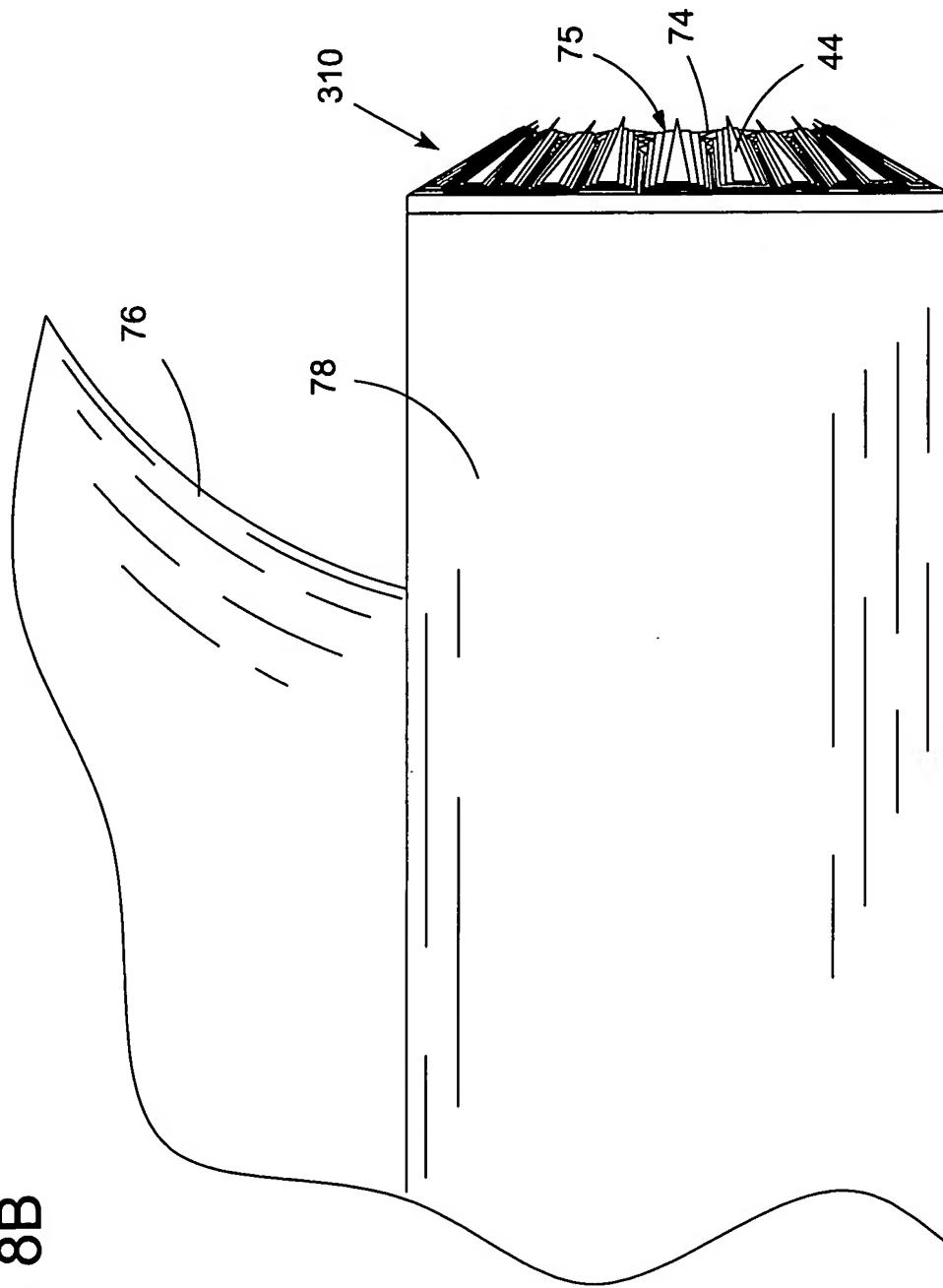


Fig. 8B



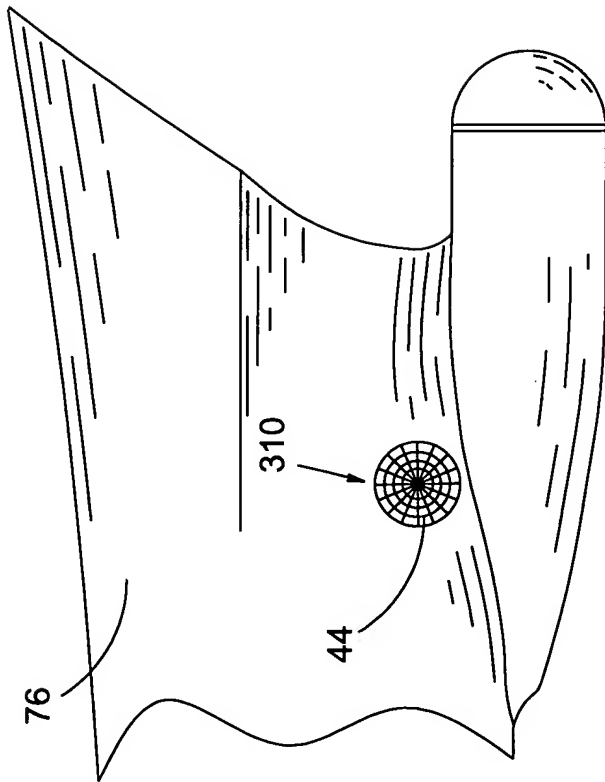


Fig. 9A

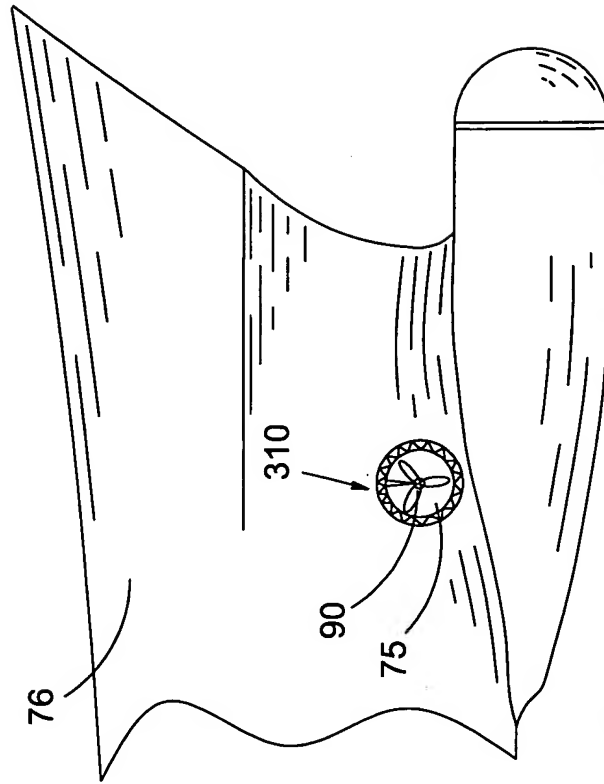
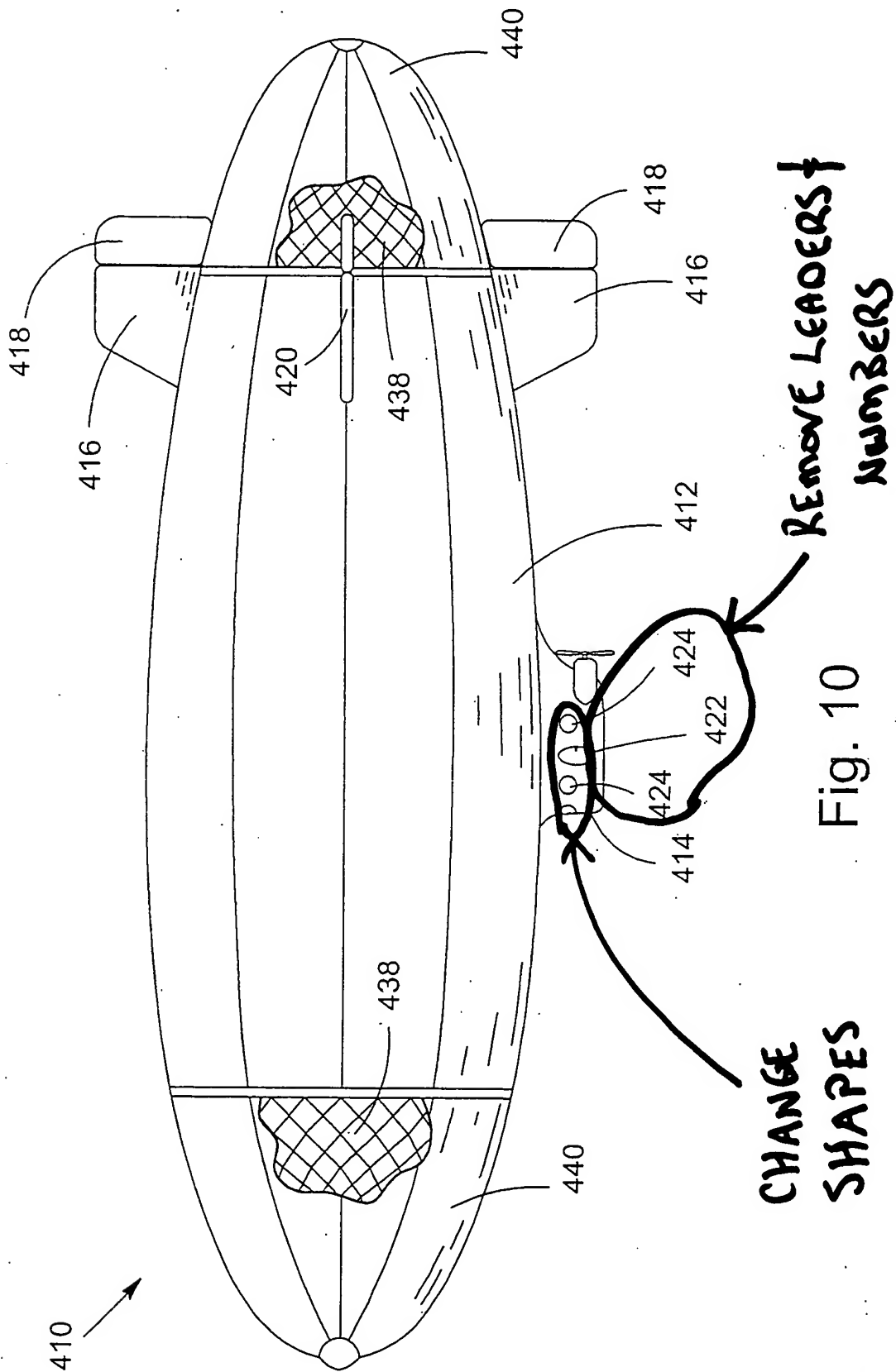
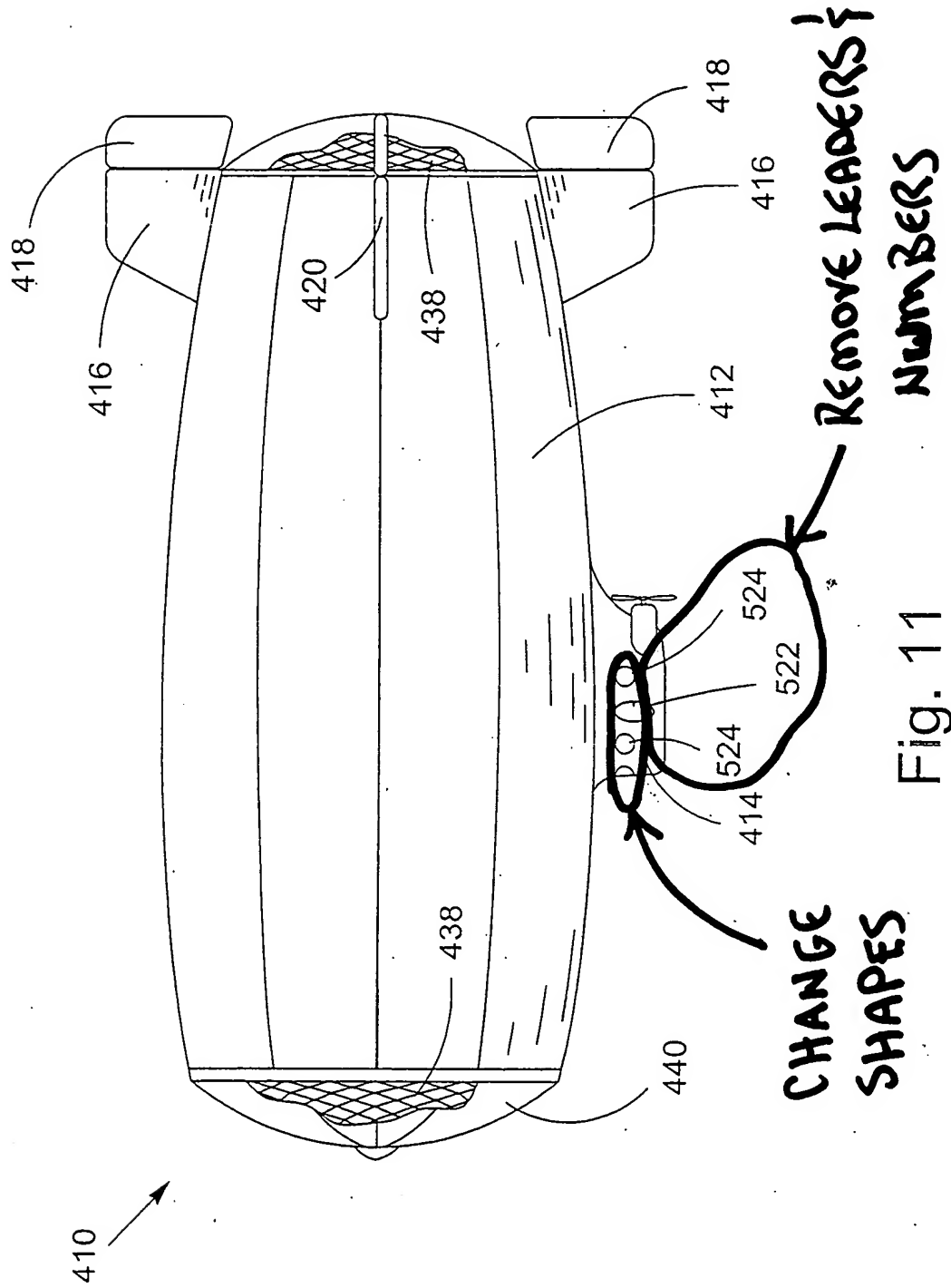
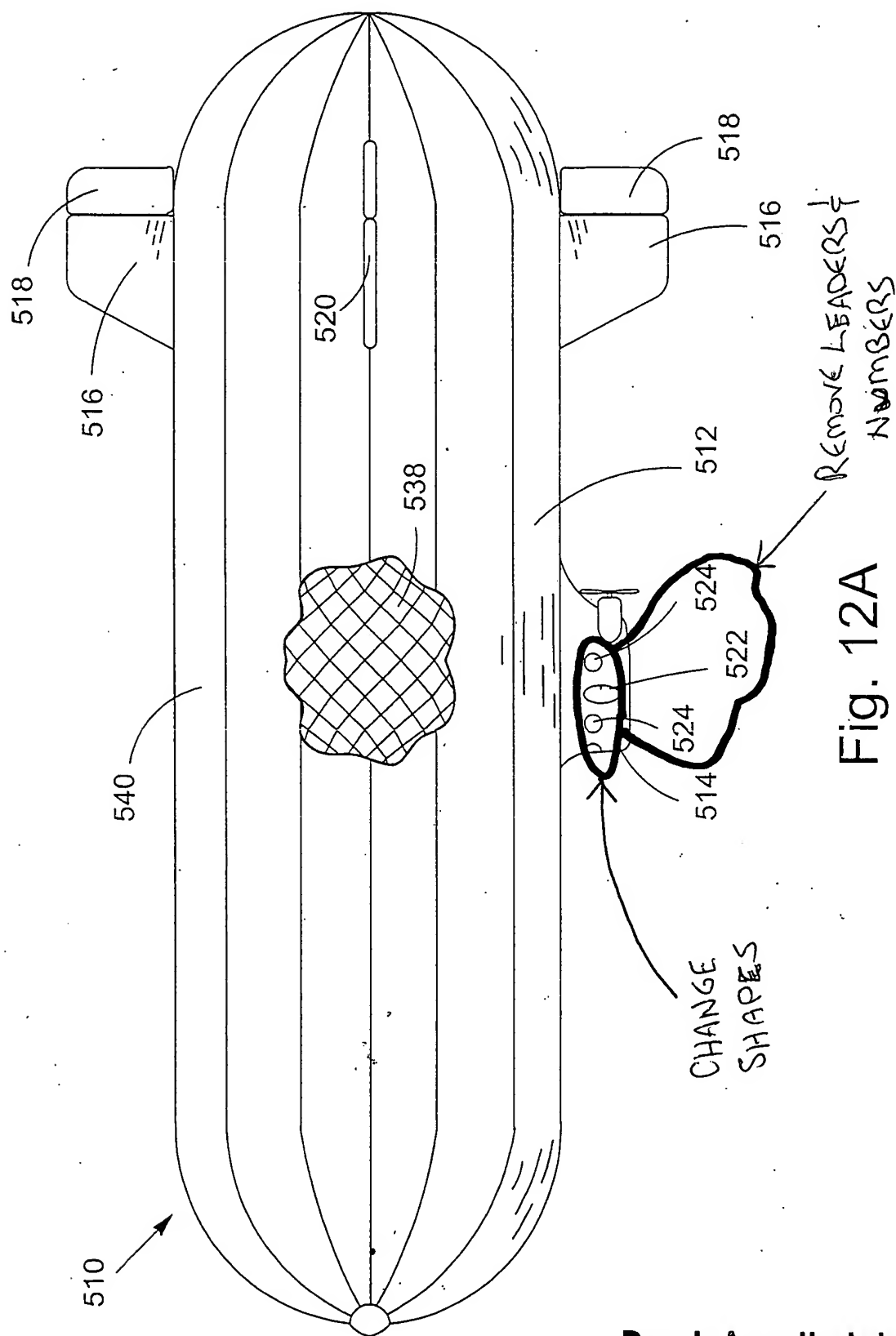
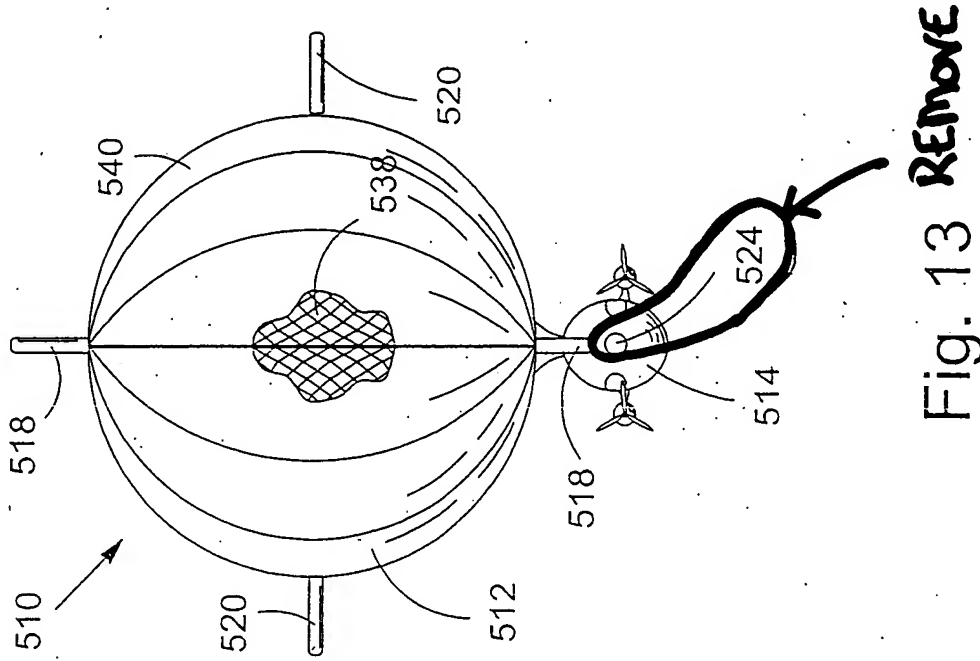
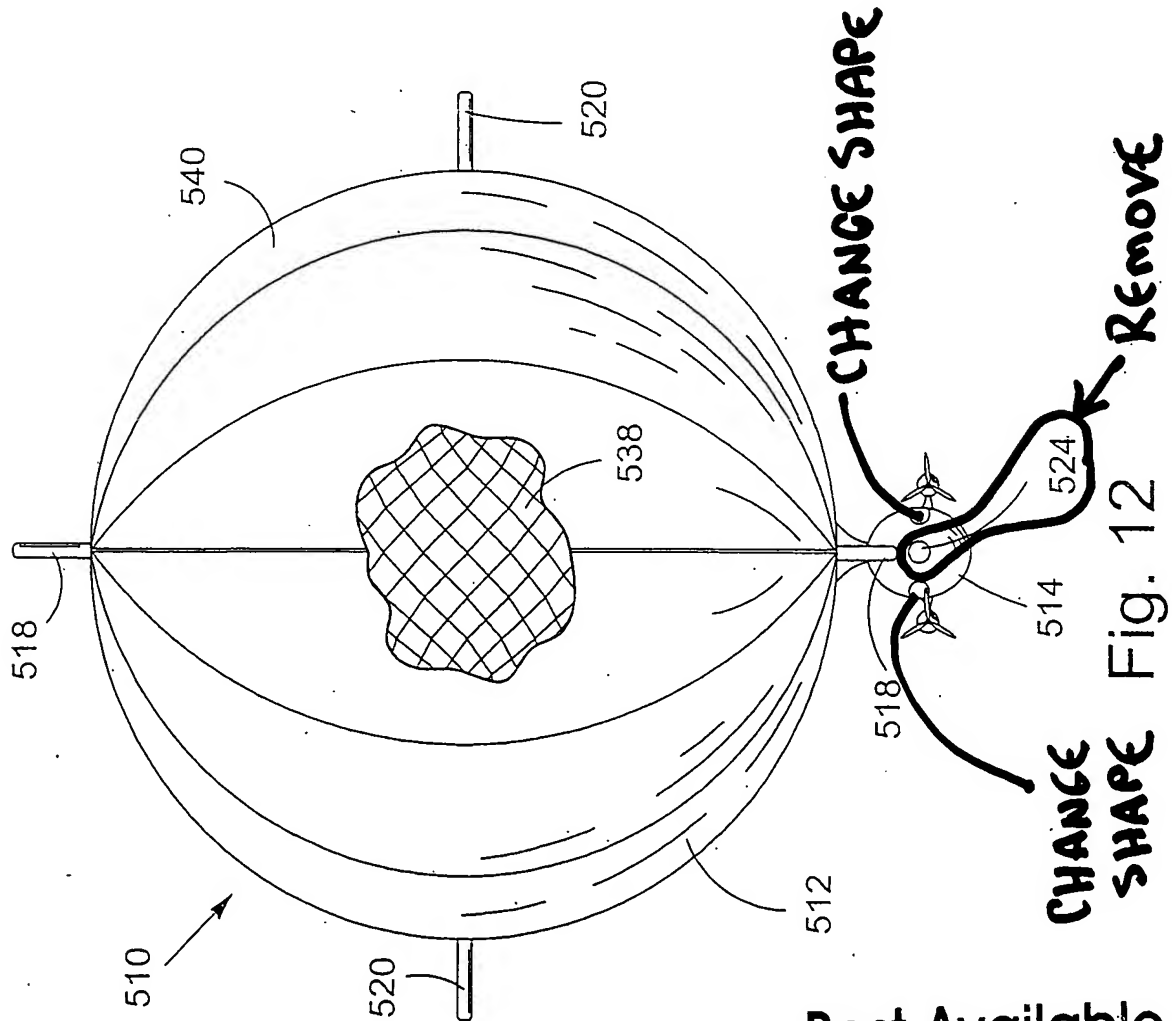


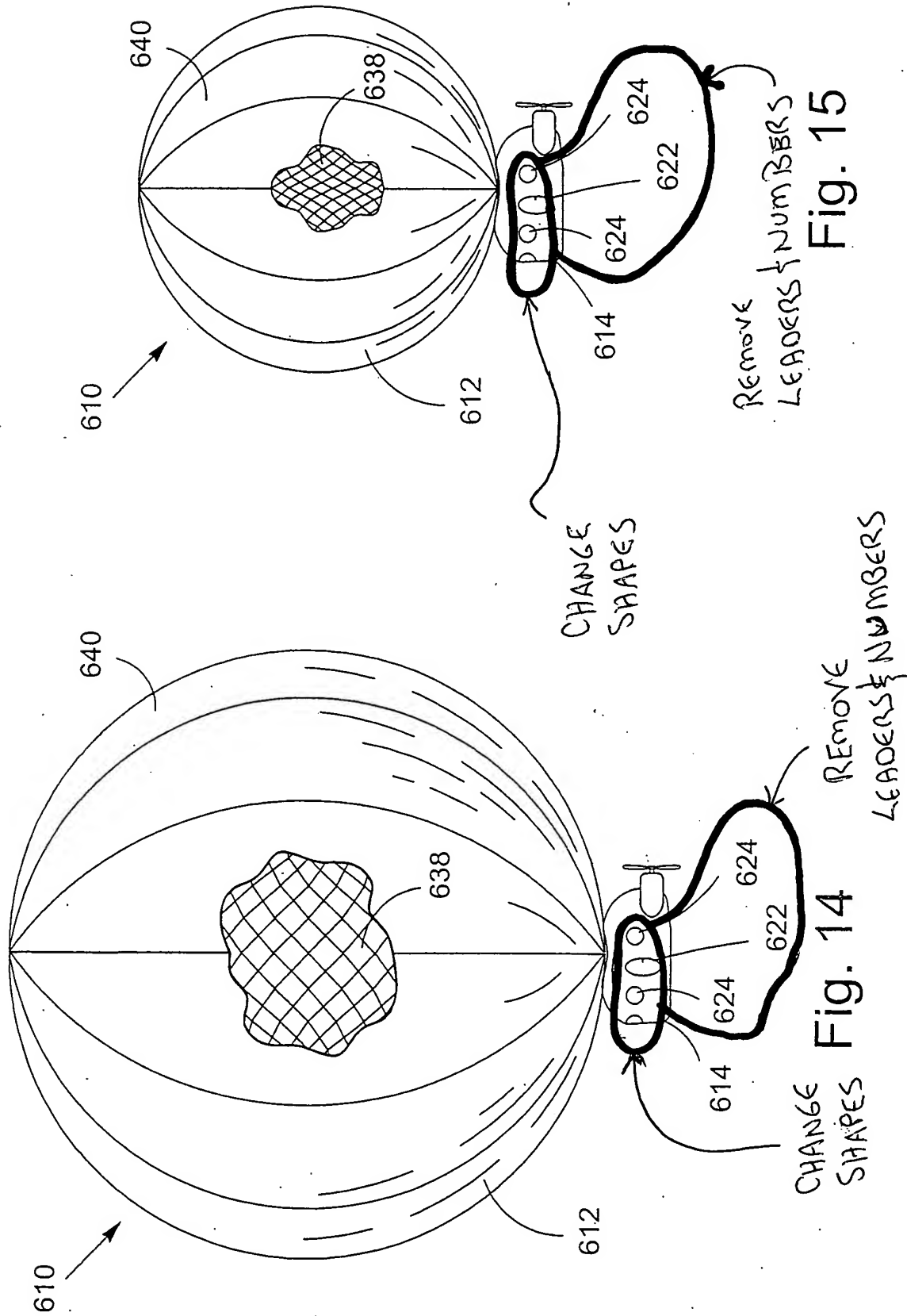
Fig. 9B











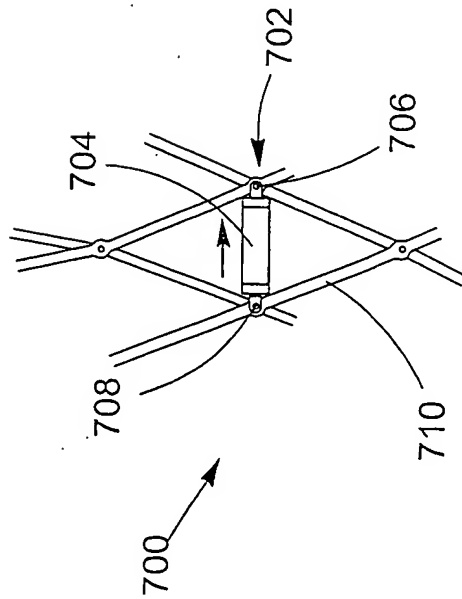


Fig. 16A

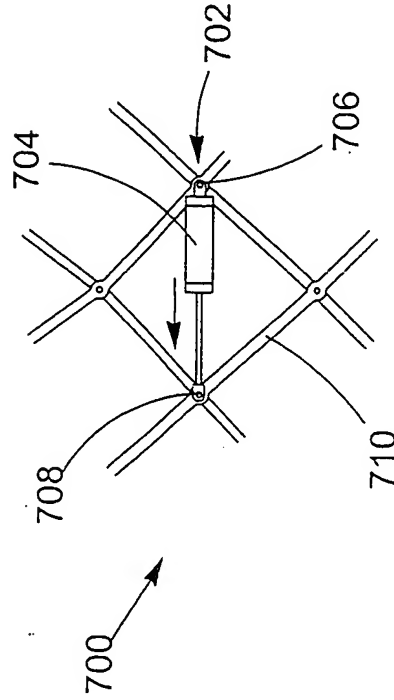


Fig. 16B

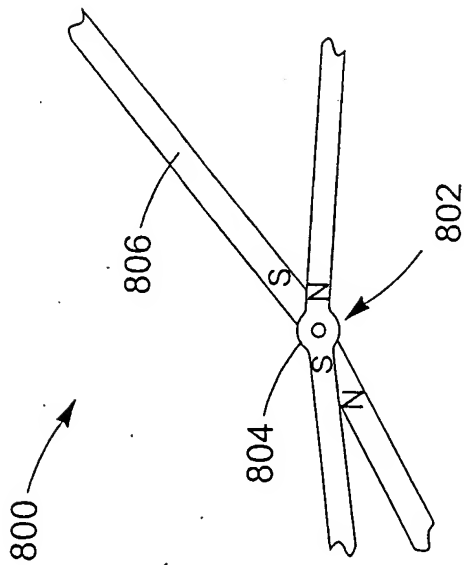


Fig. 16C

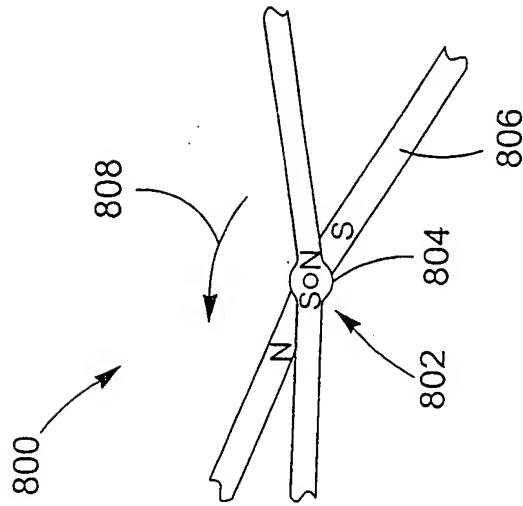


Fig. 16D